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By ECF

Honorable Lorna G. Schofield
United States District Court Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Richard Rosario v. City of New York, et al.*, 18 Civ. 4023 (LGS)

Your Honor:

I am an Assistant Corporation Counsel in the Office of Zachary W. Carter, Corporation Counsel of the City of New York, and one of the attorneys assigned to the defense in the above-referenced matter. In that capacity, I write to respectfully direct the Court's attention to *McDonough v. Smith*, 588 U.S. ____ (2019), which reversed and remanded *McDonough v. Smith*, 898 F.3d 259 (2d Cir. 2018) and also briefly respond to plaintiff's misguided letter dated June 20, 2019. (Docket Entry No. 124).

Plaintiff is wrong when he asserts that defendants relief "extensively" upon *McDonough*. Defendants did not solely rely on *McDonough v. Smith*, 898 F.3d 259 (2d Cir. 2018) in support of their motion for judgment on the pleadings. Instead, defendants' procedural argument was one of five arguments that defendants made about why plaintiff's fair trial claim must be dismissed. Indeed, two of defendants' arguments were that plaintiff's claims failed as a matter of law. (*See* Def. Mem. at I.B.3- I.B.4). Thus, notwithstanding the Supreme Court's recent decision in *McDonough*, defendants' motion should still be granted in its entirety and judgment on the pleadings should be granted in defendants' favor.

Thank you for your consideration herein.

Respectfully submitted,

/s/

Brachah Goykadosh
Assistant Corporation Counsel
Special Federal Litigation Division